

Local Acquisitions for Natural Diversity (LAND) grant program

FY 2009 Round 2

Questions and Answers

1. Who is eligible to apply?

Only the Conservation Commission of the municipality in which the property is located. It is not uncommon for others, such as land trusts or community members, to provide assistance to the Conservation Commission in preparing the application.

2. Is there a list of state-certified appraisers?

There are many qualified appraisers in Massachusetts—there is no preferred or recommended group that you should or must use. Just make sure they are certified and licensed pursuant MGL c. 112, and that they know what kind of appraisal to do for the property. Appraisal requirements are detailed in Attachment C on page 17 of the application package.

3. Are both a treasurer's statement and a copy of the cancelled check really required for reimbursement?

Yes, both are required. The treasurer certifies that payment was made from the proper account for the proper project. The check is proof that it was paid and cashed.

4. If there is a building on the property which the applicant intends to remove, does it have to be removed before the reimbursement will be paid?

Yes. For fee acquisitions, buildings for which the municipality has no plans to include in their management as contributing to public use (eg, as a visitors center) should be removed prior to filing for reimbursement, on or before June 30. If it gets to be last minute and it hasn't yet been removed, it may be acceptable to submit proof of funds and a contractor to do it. Special approval for this is necessary from DCS—talk to us before it gets to be last minute. Conservation Restrictions should generally exclude the area in which structures are located. See also question 11.

5. What language is required to be included in the deed?

Language must include that the property was acquired for conservation purposes, and that it is held by the Conservation Commission, with reference to MGL Ch. 40 §8c (establishing Conservation Commissions and defining their duties). Thus, the grantee clause in all deeds granting lands or interest therein to cities or towns in which the Commission is applying for state funds must contain the following:

“...hereby grants to the TOWN OF _____ through its Conservation Commission for administration, control, and maintenance under the provisions of M.G.L., Chapter 40, §8c, as amended with _____ covenants the land as bounded and described as follows:”

If you are not sure you have the language correct, send a draft to DCS and we will review it.

6. Does the purchaser need to have title insurance prior to the acquisition?

Grant recipients are required to show title certification (title certification ensures that a title is free of all claims). Title insurance is acquired as a way to hedge when the title isn't clear or there is a possibility that someone may lay a claim to it. If you have clear title, you do not need insurance. If you cannot show full, clear title certification, DCS will accept insurance.

If title insurance is determined a reasonable expense, and if it is a recurring payment, the state's obligation to pay for it will not extend beyond the contract period (end of the FY).

7. Can you have a community garden on LAND property?

Yes, provided that anyone—not just residents—is eligible to get a plot. Passive recreation uses are acceptable on conservation land. These include, but are not limited to: picknicking, swimming in a natural waterbody (no pools), trails, nature centers, parking areas, info kiosks, etc. In general, whatever supports the “great outdoors” is permitted, but if you have questions about a specific case, contact DCS.

8. Is a living will/lifetime tenancy arrangement with a property owner eligible for funding?

Lifetime tenancy has been permitted in very rare cases, however, it reduces the property value and thus the amount which EEA will be willing to reimburse. In acquiring land under a lifetime tenancy arrangement, the municipality accepts responsibility for ensuring that whatever de-construction or rehabilitation that is supposed to occur following the death of the tenants is actually completed. Failure to do so would disqualify the municipality from receiving further DCS grants until the issue is resolved, and could result in litigation by the state. Lifetime tenancy arrangements are not ideal candidates for state grant programs. Unless the property has very significant conservation and ecological values, it is probably best to seek other sources of funding.

9. What must be in the town meeting/city council vote?

The town meeting or city council vote must authorize: 1) the Conservation Commission to apply for the grant; 2) the expenditure of funds equal to the total project cost, not a match (because this is a reimbursement program, the town/city must pay up front); 3) the use of Eminent Domain if applicable; 4) the conveyance of a Conservation Restriction if applicable; 5) that the land is permanently protected and is under the care and control of the Conservation Commission, with reference to MGL Ch. 40 §8c.

10. When is the town meeting/city council vote needed?

The municipal vote must allocate funding that can be spent during the fiscal year of the grant. If your town meeting is annual, for example each May, fiscal decisions will probably be made for the fiscal year that begins on July 1st. For many municipalities applying in Round 2, it may be necessary to have a special meeting (even if just 30 min before the annual) that authorizes funds from the current fiscal year. See also question 28.

11. We want to acquire a property that has a barn on it (because it was formerly working agricultural land). We don't know what we will do with it, but we don't want to have to take it down because we might want to use it. Is that still eligible?

Properties with structures are eligible to receive grant funding, however, if they will not contribute to the public's use of the project, they should be removed. If an applicant wants to retain structures, plans for their use should be clearly described in the application. If a project is awarded funding, the management plan must include their maintenance—structures may not be allowed to fall into disrepair such that they pose a threat to public safety. See also question 4.

12. Does a municipality's Open Space and Recreation Plan (OSRP) have to be approved to apply?

No. A draft OSRP is acceptable for the application, but it must be fully approved by EEA for the community to receive reimbursement.

13. What is an average Commonwealth Capital score?

Commonwealth Capital scores are on a scale of 0 to 140. Middle 50% of scores range in the 50s to 70s. The Commonwealth Capital score makes up 30% of scoring for the LAND applications, so keep in mind that even if you do not think your municipality will receive a very high score, having some score is better than a 0. See www.mass.gov/commcap/ for more details.

14. Who should sign the application?

Signatures are required from:

1. Chief Executive Officer (either the mayor, chair of selectmen, or, in a few towns, town manager)—who provides legal authorization for the Conservation Commission to apply for the grant and identifies and authorizes the Project Manager to officially represent the community on the application.
2. Project Manager (usually a member of the Conservation Commission), who coordinates all aspects of the acquisition.
3. Conservation Commission members.

15. Is it possible to make a down payment on a property prior to receiving a contract from the state?

Yes. Sellers may want the buyer to make a down payment or sign an option statement prior to the actual sale and deed transfer. These represent a commitment to purchase a property, not an actual purchase, so they can occur before the contract period begins. The deed *may not* be signed over until after the beginning of the contract period (which is unlikely anyway, since most sellers will not do that unless they have received full payment). Keep in mind that any payments made prior to the contract execution are not eligible for reimbursement, so it is in the applicants' best interest to minimize down payments.

16. If a municipality already has a separate conservation fund, in which there are sufficient funds to make the acquisition, is a town meeting/city council vote authorizing their expenditure on a property still necessary?

If there is a separate conservation fund account from which acquisitions can be purchased, and there are sufficient funds, DCS does not need a separate town meeting vote authorizing the use of funds from that account for the acquisition. In such an instance, a copy of the vote that authorized the fund and designates the purposes for which it is to be used should be included in the application. If there is a provision in that document requiring that the town/city approve the expenditures, then the copy of that vote must be included.

17. How much money is available this round?

Around \$2 million or more. It has not been firmly determined, and may change.

18. When will FY 2010 grant round open?

FY 2010 grant round for LAND, PARC, LWCF, and Conservation Partnership will probably open in mid-spring of 2009, with application deadlines in the summer. As with all grant rounds, the Secretary has the authority to determine the terms of the grant.

19. If money from the Community Preservation Act (CPA) is used for the acquisition, will the reimbursement check from the state go back to the CPA account, or will it go to the municipality's general fund?

It is standard practice for the state to send reimbursement money to the municipal general fund. The reimbursement will not be identified as for the LAND project, and it may be combined with other unrelated payments. It is the responsibility of the municipality to ensure that the reimbursement amount

is returned to the appropriate account. Applicants should consult their town counsel for the specific wording necessary.

20. Is it necessary to have a Purchase and Sales (P&S) agreement at the time the application is submitted?

No. You do not need to have a P&S as part of your application. However, if you do have one, including it will demonstrate that your project is viable, and isn't likely to get bogged down in negotiations with the landowner. If you do not have a P&S, but are in negotiations, you can use the project narrative to describe your progress and your anticipated outcome—eg, “the landowner wants \$X, but we think s/he'll come down to \$Y”; or “The landowner has indicated willingness to consider a bargain sale” etc. If you are facing a difficult negotiation, tell us that too.

21. How much public access is required? If the acquisition is a CR on a property that has both forest and active agriculture, do we have to allow public access to the whole property?

Public access has to be reasonable, but it is understood that properties on which only a CR is acquired remain privately owned, and as such may involve some limitations on public access to preserve the functionality of the property and privacy of the owner. For instance, the public may have free access to the forest portion of a property, but be more limited on active agricultural lands; access may be limited to the weekends, or to times when harvesting is not taking place. The adequacy of provisions for public access will be assessed when draft Conservation Restrictions are reviewed by DCS.

22. Can a property be partly passive recreation and partly active recreation?

Funds from the LAND program can only be used for passive recreation lands. If a municipality is interested in acquiring a property that will be, for instance, half forested walking trails and half soccer fields, only the forested half would be eligible for LAND funding. The forested portion would need a separate appraisal and survey.

Alternatively, the municipality may consider applying for a Parkland Acquisitions and Renovations for Communities (PARC) grant, which provides funding for acquisition of and construction on properties to be used for active recreation.

23. Is bicycling permitted on properties receiving LAND funding?

Yes. Decisions about the specific types of passive recreational activities permitted on a particular property are determined by the municipality and should be clearly described in its management plan, which will be reviewed by DCS.

24. Since our town meeting vote authorizing the application to the program and use funds to acquire the property, the landowner has reduced by a few acres the land he is willing to sell. Is a new town meeting vote necessary?

Not necessarily. It is not uncommon for the terms of a purchase to change slightly from the time negotiations start (and when a town or city may vote on the matter) and when the property is finally closed. If the acreage decreases, a new vote is unnecessary, unless the language of the original vote precludes modification (eg, “all of the land on assessor's map X,” or “32.4 acres, not more and not less”) or specifically identifies for protection the area which would now be excluded (eg, the landowner wants to withhold Smith Rock, and the vote authorizes the purchase of “Smith Rock and surrounding 20+/-acres”). If the acreage increases, a new vote will be necessary.

25. Can a municipality acquire land that will then be subdivided?

Yes, but state funds cannot go towards the purchase of the portion that will be subdivided out. If a community purchases a property that will be subdivided, the appraisal and survey must be for only that part of the property that is to be retained.

26. If a municipality applies and receives an award this grant round, will that affect their eligibility to receive funding in the next round?

No. Municipalities may submit as many applications as they want each grant round. Each application is reviewed on its own merits, without regard to previous awards.

27. We closed on our property at a sale price that is lower than our initial estimates. Because of that, our reimbursement rate for our purchase price will not use up all of the grant funds we were awarded. Can we use some of the funds to pay for “soft costs” such as appraisals, Chapter 21e, surveys, legal fees?

Most of the attendant costs are not eligible for reimbursement. Eligible expenses include the acquisition itself, recording fees, title search, and the survey. While expanding the list of eligible items would help applicants, focusing on the largest component of project costs allows DCS to spread limited funds to a maximum number of projects without jeopardizing their success. Even if your sale price has dropped, it will still constitute the most substantial portion of your total project cost.

28. We have a town meeting scheduled for May, where we would get approval to purchase our property. The meeting will decide FY 2010 budget. We don't have FY2009 funds left, but we will have FY 2010 funds available—can we use FY 2010 funds to purchase property under the FY 09 grant round?

Municipalities determine where they will draw funds to make acquisitions under the LAND program. EEA requires only that the funds, whatever their source, be expended within the contract period, which starts when its Standard Contract is executed and ends on June 30 of the year for which it was awarded. If a municipality is able to expend funds from its FY 2010 account before June 30, 2009, then it can use those funds for the project. See question 10.

29. We are working with a local land trust to prepare our application. The land trust contracted for the appraisal—is that acceptable?

Yes. Appraisals prepared for a project partner are acceptable. Appraisals prepared for or contracted by the landowner will not be accepted.

30. Can we charge a fee to camp on property acquired under the LAND program?

Municipalities may charge a fee for camping on or other use of land acquired under the program, however, fees may not unduly discriminate against non-residents. Specifically, municipalities may not charge non-residents more than twice the charge for residents, and, residents and non-residents must be equally able to get a camping spot. Any funds generated through fees must be used on-site, as for maintenance or educational programs.

31. If a municipality uses CPA funds to acquire property under the LAND program, does it still have to have a Conservation Restriction on it? Isn't it already protected by virtue of being acquired through LAND?

Property acquired with the help of the LAND grant program is protected Article 97 conservation land, however, this does not override the requirements of the Community Preservation Act. The CPA requires that, for fee acquisitions, the municipality convey a Ch. 184 CR to a qualified 501(c)(3) organization whose purpose is land and/or water conservation (ie, land trusts). It may not be an internal deed restriction. Fulfillment of the CPA is the responsibility of the municipality; while it is desirable that all transactions related to a project be completed by the end of the fiscal year, conveyance of a CR to a qualified entity is not a requirement for reimbursement under this grant program.

32. Is the application process different for acquisitions by taking?

The application process for acquisitions by taking or eminent domain is not substantially different than for purchase in fee simple or Conservation Restriction. The Conservation Commission must request, in writing, the board of selectmen or city council take the property via eminent domain. The order of taking must be submitted to DCS (see Section 3D and Attachment E: Sample Municipal Vote in the application package). Keep in mind that DCS determines a municipality's reimbursement based on either the amount paid, or the appraised value, whichever is lowest. Completing the project on time may be an issue if the taking is contentious (See question 33).

All grant program participants must provide for fair and equitable treatment of persons and businesses to be displaced as a result of the acquisition, in abidance with MGL c.79A or c.80A. See Attachment C: Appraisal Report Requirements for more details regarding the appraisal of properties to be acquired by taking.

33. What purchase price should be used in the application if the total cost is unknown due to the acquisition being a taking? Can the assessed value be used as the pro tanto amount?

The assessed value may not be used as a proposed pro tanto amount. An appropriate appraisal should be submitted. Applicants should consult their municipal counsel on what to do for appraisals and pro tanto.

34. Due to recent changes in permissible use, the assessed value of a property is lower than the anticipated fair market value. What figure should be used to calculate project cost?

DCS determines reimbursement under the LAND and other grant programs based upon the amount actually paid or the appraised value, whichever is lower. Sometimes the final sale price changes from that included in the application. If an applicant is selected to receive an award, the amount awarded will be listed as up to a specified amount, based upon the appraisal(s) submitted in the application. If the final sale price is less than that in the application, the actual reimbursement amount may be reduced accordingly. It will not be increased. DCS asks that applicants use purchase price estimates that are as accurate as possible to enable the fullest use and widest distribution of funding to worthy applicants.

More questions? Questions will be taken and answers posted here until February 25, 2009.

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